

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-1390V

KRYSTAL KILGORE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: November 16, 2023

Laura Levenberg, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Jennifer A. Shah, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On May 24, 2021, Krystal Kilgore filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”), a defined Table injury, or in the alternative a caused-in-fact injury, after receiving an Hepatitis B (“Hep B”) vaccine on March 14, 2019. Petition at 1, ¶¶ 1, 14. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On September 29, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On November 16, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$52,500.00 for pain and suffering. Proffer at 1. In the Proffer, Respondent represented

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$52,500.00, for her pain and suffering, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KRYSTAL KILGORE,

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SECRETARY OF HEALTH AND
HUMAN SERVICES,

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No. 21-1390V
Chief Special Master Corcoran
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RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On May 24, 2021, Krystal Kilgore (“petitioner”) filed a petition for compensation (“Petition”) under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to –34, as amended (“Vaccine Act” or “Act”). Petitioner alleges that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”) as a result of a Hepatitis B vaccination administered on March 14, 2019. Petition at 1.

On March 3, 2023, respondent filed his Vaccine Rule 4(c) report, recommending that compensation be denied and the Petition dismissed. ECF No. 23. On September 29, 2023, this Court issued a Ruling on Entitlement finding petitioner entitled to compensation.¹ ECF No. 24.

I. Items of Compensation

Respondent proffers that petitioner should be awarded **\$52,500.00**, consisting entirely of compensation for pain and suffering. This represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

¹ Respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master’s September 29, 2023 Ruling on Entitlement. This right accrues following issuance of a Decision on Damages.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following²: a lump sum payment of **\$52,500.00**, representing compensation for all elements of economic and noneconomic damages, in the form of a check payable to petitioner, Krystal Kilgore.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Krystal Kilgore: **\$52,500.00.**

Respectfully submitted,

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C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

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Torts Branch, Civil Division

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Assistant Director
Torts Branch, Civil Division

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

s/ Jennifer A. Shah

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Dated: November 16, 2023